

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KAREN IOVINO,

Plaintiff,
v.

Civil Action No. 5:21-cv-00064

MICHAEL STAPLETON ASSOCIATES,
LTD., d/b/a MSA SECURITY, INC.,

Hon. Thomas T. Cullen

Defendant.

**PLAINTIFF'S STATEMENT OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
OBJECTIONS TO MAGISTRATE'S TOUHY ORDER**

This Statement of Supplemental Authority which does not exceed 350 words is in support
Plaintiff's Objections to the Magistrate's Memorandum Opinion & Order, to wit Section IV.B.

"The TOR's Reasoning Conflicts with Supreme Court Precedent Rejecting Agency Overreach":

(1) *Ohio v. EPA*, 2024 U.S. LEXIS 2846 (June 27, 2024). The Court emphasized the
necessity for clear statutory authorization for agency actions having significant economic and
political implications. The EPA overstepped its authority by enforcing climate policies without
explicit Congressional approval.

(2) *Loper Bright Enterprises v. Raimondo*, 2024 U.S. LEXIS 2882 (June 28, 2024). The
Court curtailed the National Marine Fisheries Service's power in ruling it could not impose
regulations without clear statutory backing and agencies must operate only within the bounds of
that statutory authority.

(3) *Corner Post, Inc. v. Bd. of Governors of the Federal Reserve System*, 2024 U.S.
LEXIS 2885 (July 1, 2024). The Court restricted the Federal Reserve's authority by holding that

it could not implement important regulations without specific Congressional authorization. And a challenge to those regulations does not accrue until a plaintiff is injured by final agency action.

These cases redouble the Supreme Court's jurisdictional push to limit deference and authority to agencies in order to preserve the separation of powers and the requirement that the judiciary not allow agencies to weaken or usurp Congressional authority in critical legislative realms. Application of three cases leaves little regulatory room for the Department of State (DoS) condition judicial authority over discovery entrusted by Congress to district courts under the Federal Rules of Civil Procedure. These holdings align with the same message sent by the Court in *Dep't of Homeland Sec. v. MacLean*, 574 U.S. 383 (2015), relied upon in Plaintiff's Objections. *MacLean* held that agency regulations cannot restrict disclosures under the Whistleblower Protection Act 5 U.S.C.S. § 2302(b)(8) without explicit statutory support. Similarly, the DoS Touhy regulations cannot restrict or condition witness or party testimony under the contractor employee whistleblower protection provisions of 41 USCS § 4712. The magistrate judge's order validating the broad application of DoS's administrative authority is inconsistent with these recent rulings.

Respectfully submitted,

/s/ Thad M. Guyer

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2024 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record, and to:

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